Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-34

COLIN F. BEATON and ELEANOR M. BEATON,
APPELLANTS,

v.

WILLIAM I. RANDALL and MARILYN M. SULLIVAN, as they are the duly appointed Judges of the Land Court of the Commonwealth of Massachusetts, and QUINOIL INDUSTRIES, INC.,
APPELLEES.

ON APPEAL FROM THE SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

MOTION TO DISMISS OR TO AFFIRM OF THE APPELLEES, JUDGES OF THE LAND COURT OF THE COMMONWEALTH OF MASSACHUSETTS

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Opinion Below

The opinion of the Supreme Judicial Court for the Commonwealth of Massachusetts is officially reported at Mass. Adv. Sh. (1975) 1005 and unofficially reported at 326 N.E.2d 302. (Appellants App. 10-28).

Jurisdiction

The order of the Supreme Judicial Court for the Commonwealth of Massachusetts was entered on April 10, 1975. A Notice of Appeal to this Court was filed in the Supreme Judicial Court for the Commonwealth of Massachusetts by Appellants on June 5, 1975. However, this Court is without jurisdiction under the provisions of 28 U.S.C. § 1257(2) in that this appeal does not give rise to a substantial federal question.

Constitutional Provisions and Statutes Involved

Fourteenth Amendment to the United States Constitution

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Statutes

50 U.S.C. App. § 532 (1970)

(1) The provisions of this section shall apply only to obligations secured by mortgage, trust deed, or other security in the nature of a mortgage upon real or personal property owned by a person in military service at the commencement of the period of the military service and still so owned by him which obligations originated prior to such person's period of military service.

(2) In any proceeding commenced in any court during the period of military service to enforce such obligation arising out of nonpayment of any sum thereunder due or out of any other breach of the terms thereof occurring prior to or during the period of such service the court may, after hearing, in its discretion, on its own motion, and shall, on application to it by such person in military service or some person on his behalf, unless in the opinion of the court the ability of the defendant to comply with the terms of the obligation is not materially affected by reason of his military service—

(a) stay the proceedings as provided in this Act [sections 501-548 and 560-590 of this Appendix]; or

(b) make such other disposition of the case as may be equitable to conserve the interests of all parties.

(3) No sale, foreclosure, or seizure of property for nonpayment of any sum due under any such obligation, or for any other breach of the terms thereof, whether under a power of sale, under a judgment entered upon warrant of attorney to confess judgment contained therein, or otherwise, shall be valid if made after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 [Oct. 6, 1942] and during the period of military service or within three months thereafter, except pursuant to an agreement as provided in section 107 [section 517 of this Appendix], unless upon an order previously granted by the court and a return thereto made and approved by the court.

(4) Any person who shall knowingly make or cause to be made any sale, foreclosure, or seizure of property, defined as invalid by subsection (3) hereof, or attempts so to do, shall be guilty of a misdemeanor and shall be

punished by imprisonment not to exceed one year or by fine not to exceed $1,000, or both.

MASSACHUSETTS STATUTES

Mass. St. 1943, c. 57, §§ 1-3, as amended by Mass. St. 1945, c. 120, § 1:

"SECTION 1. In any proceeding in equity for authority to foreclose a mortgage, which for the purposes of this act shall be construed to include a trust deed, or other security in the nature of a mortgage, covering real or personal property, or both, by entry and possession, by exercise of a power of sale contained therein, or otherwise as provided by law, or to make any seizure of property thereunder, brought because of an Act of Congress known as the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, or any amendments thereto hereafter enacted, notice may be issued in substantially the following form by the court in which such proceeding is pending, returnable on any convenient date, irrespective of the return days otherwise prescribed by law or rule, and requiring all appearances and answers to be filed on or before the return day:—

"COMMONWEALTH OF MASSACHUSETTS

———— Court

————, ss In Equity

To (*insert the names of all defendants named in the bill*) and to all it may concern:

"———— claiming to be the holder of a mortgage — trust deed — security in the nature of a mortgage (*strike out the descriptive words which are inapplicable*) covering — property (*insert nature of property, whether real or personal*) situated in (*insert location of property, including name of city or*

town and, if stated in the mortgage or in the bill, the street and number) given by (*insert names of parties, date and reference to record*), has filed with said court a bill in equity for authority to foreclose said mortgage — trust deed — security in the nature of a mortgage — in the manner following: (*insert contemplated method of foreclosure, whether by entry and possession, exercise of a power of sale, or otherwise*) — to seize certain real — personal — property (*strike out descriptive word which is inapplicable*) covered by said mortgage — trust deed — security in the nature of a mortgage.

"If you are entitled to the benefits of the Soldiers' and Sailors' Civil Relief Act of 1940 as amended, and you object to such foreclosure or seizure, you or your attorney should file a written appearance and answer in said court at ———— on or before ———— (Return Day), or you may be forever barred from claiming that such foreclosure or seizure is invalid under said act.

"Witness ———— Esquire, Judge of said Court, this ———— day of ————, 19——.

"The publication of a copy of said notice once not less than twenty-one days before the return day in a newspaper designated by the court, and the mailing of a copy thereof by registered mail not less than fourteen days before the return day to each defendant named in the bill, shall be sufficient service of said notice, unless the court otherwise orders, provided however that prior to the return day fixed in said notice, or within such further time before decree as the court may allow, a copy thereof shall be recorded in each registry of deeds and city or town clerks office in which such mortgage is recorded.

"Section 2. An entry and possession taken for the purpose of foreclosure, or a foreclosure effected by exercise of a power of sale or by any other method, or a seizure of property, done pursuant to authority granted in such proceedings, may be approved by the court but not until after the expiration of the period for appeal from the order authorizing the same. There shall be no appeal from or review of such approval.

"The period of thirty days within which a copy of the notice of sale and an affidavit are required to be recorded by section fifteen of chapter two hundred and forty-four of the General Laws, and the period of thirty days within which the memorandum or certificate of entry is required to be recorded by section two of said chapter two hundred and forty-four shall, in case such a proceeding has been had, be computed from the time the court approves the sale, or entry, rather than from the time of the sale, or entry, as provided in said sections.

"A copy of the order authorizing foreclosure by entry, or by sale, or otherwise as provided by law, or a copy of the order authorizing the seizure of property, and the approval thereof, may be recorded in the registry of deeds and city or town clerk's office in which such mortgage is recorded, and if so recorded shall be conclusive evidence of compliance with the provisions of said Soldiers' and Sailors' Civil Relief Act of 1940, and any amendments thereto, insofar as the court has power to determine the same, as against all persons, except that such copy shall not be conclusive evidence of such compliance against persons whose interests appeared of record prior to the recording of the notice of said proceedings unless they were named as defendants or had notice of said proceeding.

"Section 3. In proceedings under section one hereof where a mortgage includes land, the land court shall have jurisdiction as to said mortgage even though it may include

personal property and shall have jurisdiction as to any additional or supplementary mortgage securing the same obligation although such mortgages include personal property."

Mass. St. 1959, c. 105, amending Mass. St. 1943, c. 57:

Section 1. The form of notice in section 1 of chapter 57 of the acts of 1943 is hereby amended by striking out the salutation or greeting and inserting in place thereof the following:—

To (insert the names of all defendants named in the bill) *and to all persons entitled to the benefit of the Soldiers' and Sailors' Civil Relief Act of 1940 as amended:*

Section 2. Said section 1 of said chapter 57 is hereby further amended by adding at the end the following paragraph:—

In proceedings under this section, no person who is not entitled to the benefit of the Soldiers' and Sailors' Civil Relief Act of 1940 as amended, with respect to the mortgage, trust deed or other security described in the bill whether named as a defendant in the bill or not shall be entitled to appear or be heard in such proceeding except on behalf of a person so entitled, or unless an affidavit by the claimant, or a certificate by counsel appearing for him, stating that he is in the service and thus entitled to the benefit of the act, is filed with the appearances. Such proceedings shall be limited to the issues of the existence of such persons and their rights, if any.

Question Presented

Whether St. 1959, c. 105 of the Laws of the Commonwealth of Massachusetts, which limits proceedings under the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, 50 U.S.C. App. § 501 *et seq.* (1970), to an inquiry solely into the existence and rights of any persons pro-

tected by that act, violates the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

Statement of the Case

On October 10, 1966 Appellants (hereinafter "the Beatons") mortgaged certain land in Bridgewater, Massachusetts to Appellee Quincy Oil Company, presently Quinoil Industries, Inc. (hereinafter "Quinoil") [Appellants' App. 20]. On February 20, 1974 Quinoil filed a document entitled "Bill to Foreclose Mortgage" in the Massachusetts Land Court in order to comply with the Soldiers' and Sailors' Civil Relief Act of 1940, as amended 50 U.S.C. App. § 501 et seq. (1970) (hereinafter the "Relief Act"). [Appellants' App. 28]. The Beatons attempted to file an Answer which did not allege that they were protected by the Relief Act, but which instead related to the merits of the foreclosure itself, and included a purported incorporation by reference of a pending bill in equity to discharge and redeem the mortgage. [Appellants' App. 20, 21, 26].

Without accepting the Answer, the deputy recorder of the state Land Court referred it to Appellees, Judges of the Land Court, at which point the Beatons moved that their Answer be accepted for filing. [Appellants' App. 20]. The Judges denied this motion in accordance with St. 1959, c. 105, which limits the scope of the Land Court proceeding to determination of the existence and rights of persons protected by the Relief Act. [Appellants' App. 20]. The Beatons thereupon brought a petition for writ of mandamus before the Single Justice of the Supreme Judicial Court of Massachusetts. The Petition sought to compel the Appellees, Judges of the Land Court, to accept the Answer for filing and to adjudicate any issues raised by the Answer. All Appellees filed demurrers. The Single Justice entered an Order Sustaining Demurrers. [Appellants' App. 31]. The decision of the Single Justice was affirmed on appeal to the Supreme Judicial Court of Massachusetts. [Appellants' App. 25]. The Supreme Judicial Court, emphasizing the extremely limited effect of the pending Land Court proceeding, rejected as "utterly without merit" the Beatons' contention that the application of St. 1959, c. 105 permits the taking of property without due process of law. [Appellants' App. 19-28]. The Beatons then filed this appeal. [Appellants' App. 29-30].

Argument

THE DECISION OF THE SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS IS CLEARLY CORRECT AND DOES NOT RAISE A SUBSTANTIAL FEDERAL QUESTION.

I. Proceedings in the Massachusetts Land Court Pursuant to the Soldiers' and Sailors' Civil Relief Act of 1940 Do Not Deprive Appellants of Any Property Interests Protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

Congress passed the Soldiers' and Sailors' Civil Relief Act of 1940, now 50 U.S.C. App. § 501 *et seq.* (1970), in order to protect the vast number of people then entering the armed services from certain civil liabilities.[1] One benefit which this act confers on members of the military is temporary protection from mortgage foreclosure actions. 50 U.S.C. App. §532 provides in pertinent part:

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[1] This legislation was enacted shortly after the outbreak of World War II when the United States, although not yet a belligerent, was engaged in a massive buildup of its armed forces. Beaton v. Land Court, Mass. Adv. Sh. (1975) 1005, 1007 n.4, 326 N.E.2d 302, 304 (1975).

(2) In any proceeding commenced in any court during the period of military service to enforce such obligation arising out of nonpayment of any sum thereunder due or out of any other breach of the terms thereof occurring prior to or during the period of such service the court may, after hearing, in its discretion, on its own motion, and shall, on application to it by such person in military service or some person on his behalf, unless in the opinion of the court the ability of the defendant to comply with the terms of the obligation is not materially affected by reason of his military service—

(a) stay the proceedings as provided in this Act [sections 501-548 and 560-590 of this Appendix]; or

(b) make such other disposition of the case as may be equitable to conserve the interests of all parties.

(3) No sale, foreclosure, or seizure of property for nonpayment of any sum due under any such obligation, or for any other breach of the terms thereof, whether under a power of sale, under a judgment entered upon warrant of attorney to confess judgment contained therein, or otherwise, shall be valid if made after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 [Oct. 6, 1942] and during the period of military service or within three months thereafter, except pursuant to an agreement as provided in section 107 [section 517 of this Appendix], unless upon an order previously granted by the court and a return thereto made and approved by the court.

The Relief Act, then, permits a stay of foreclosure proceedings brought to enforce obligations of persons entitled

to protection of the Act. The Act, however, does not purport to affect the validity of mortgage foreclosure proceedings involving persons not entitled to the benefits of the Act.

Soon after passage of the Relief Act, the General Court of Massachusetts, in order to implement the Act, enacted Chapter 25 of the Acts of 1941, later replaced by Chapter 57 of the Acts of 1943, and subsequently amended by Chapter 120 of the Acts of 1945, so as to remain consistent with the Relief Act. The Massachusetts Act dealt primarily with the forms of notice required in equitable suits to foreclose brought pursuant to the Relief Act. Subsequently, the Act was amended once again. Mass. St. 1959, c. 105. Section 2 of Chapter 105 of the Acts of 1959 provides that the following paragraph be added to Section 1 of Chapter 57 of the Acts of 1943:

> In proceedings under this section, no person who is not entitled to the benefit of the Soldiers' and Sailors' Civil Relief Act of 1940 as amended, with respect to the mortgage, trust deed or other security described in the bill whether named as a defendant in the bill or not shall be entitled to appear or be heard in such proceeding except on behalf of a person so entitled, or unless an affidavit by the claimant, or a certificate by counsel appearing for him, stating that he is in the service and thus entitled to the benefit of the act, is filed with the appearances. Such proceedings shall be limited to the issues of the existence of such persons and their rights, if any.

The composite effect of these statutes is procedural, not substantive. They neither enhance nor diminish any substantive rights created by the Relief Act; rather, they merely prescribe the manner in which such rights are adjudicated in the Commonwealth of Massachusetts.

The effect of an action to foreclose, brought pursuant to the Relief Act and in accordance with the Massachusetts procedural statutes, is extremely limited. Such an action adjudicates only the existence (or lack thereof) of persons entitled to protection of the Relief Act. As the Supreme Judicial Court noted, the challenged procedure is not determinative of the general validity of the foreclosure under Massachusetts law. *Beaton* v. *Land Court*, Mass. Adv. Sh. (1975) 1005, 1012, 326 N.E. 2d 302, 305 (1975). Such an action "simply allows mortgagees, in addition to taking all steps necessary to foreclose, [to] make certain that there will be no cloud on the title following foreclosure as a result of an interested party having been in, or just released from, military service and thus under the protective umbrella of the 1940 Relief Act." *Id.* Accordingly, the only "property right" which could be lost even potentially as a result of such an action is the right to avail oneself of the protection provided by the Relief Act. The Beatons, of course, do not assert that they are entitled to such protection. Their claim is, rather, based on the misconception that the challenged proceedings involve a determination by the Judges of the Land Court that a breach of condition of the mortgage has in fact occurred. The Court's opinion makes it clear that the Judges of the Land Court do not make such a determination, but rather only adjudicate the issue of the existence or non-existence of persons entitled to the benefits of the Relief Act—without regard to the merits of the foreclosure or of any alleged defenses which the mortgagor might assert. *Id.* The Beatons' assertion that adjudication of an action brought pursuant to the Relief Act in the manner dictated by Massachusetts law deprives them of any property interests is therefore without merit. The Beatons will not be deprived of any property under the Relief Act and, therefore, their Jurisdictional Statement does not raise a substantial

federal question. *See generally, Board of Regents of State Colleges* v. *Roth,* 408 U.S. 564 (1972).

II. Massachusetts' Limitation on Proceedings Pursuant to the Soldiers' and Sailors' Civil Relief Act of 1940 to Issues Raised by That Act Does Not Deprive Appellants of Due Process of Law.

A. *Appellants will have an opportunity to be heard on all defenses to foreclosure as a matter of Massachusetts law.*

Foreclosure itself obviously involves loss of property. However, Massachusetts foreclosure procedures, unchallenged by the Beatons, unquestionably allow a mortgagor an opportunity to present all available defenses to foreclosure. *Beaton* v. *Land Court, supra* at 1016, 326 N.E.2d at 307; *see Newman* v. *Greenberg,* Mass. Adv. Sh. (1972) 771, 281 N.E. 2d 590 (1972). In such a case, the issue whether the mortgage conditions have been violated may be litigated. *McCombs* v. *Elmes,* 197 Mass. 19, 21-22, 83 N.E. 306 (1907). If the debt underlying the mortgage has been discharged the mortgagor may seek cancellation of the note and discharge of the mortgage. *Perry* v. *Oliver,* 317 Mass. 538, 541, 59 N.E. 2d 192, 193 (1945). In general, as the Supreme Judicial Court clearly stated, the Massachusetts courts may reform, rescind, or cancel written instruments, including mortgages, on grounds such as fraud, mistake, accident, or illegality. *Beaton* v. *Land Court, supra* at 1016, 326 N.E. 2d at 307. *See, e.g., Brodie* v. *Evirs,* 313 Mass. 741, 43 N.E. 2d 218 (1943); *Hermanson* v. *Seppalla,* 255 Mass. 607, 152 N.E. 2d 363 (1926); *Rice* v. *Winslow,* 182 Mass. 273, 65 N.E. 366 (1902).

It is important to note that the Beatons have not challenged the adequacy of defenses and relief available to them under Massachusetts law. They have only challenged

the procedural segregation of these defenses from the Relief Act proceedings.[2] Accordingly, the only issue before the Supreme Judicial Court was whether that procedural segregation is constitutional. However, the Court's opinion makes it clear that under Massachusetts law the Beatons will have the opportunity to be heard regarding the validity of the foreclosure. *Beaton* v. *Land Court, supra* at 1015-17, 362 N.E. 2d at 306-307.

B. *Procedural segregation of determination of the existence of persons entitled to the protection of the Soldiers' and Sailors' Civil Relief Act of 1940 from determination of the merits of a foreclosure does not deprive Appellants of Due Process of Law.*

The Beatons assert the right to present certain defenses to foreclosure of their real estate. With this proposition there can be no argument. Indeed, as described above, they have the opportunity to raise all possible defenses. The Beatons, though, insist on the right to raise their defenses in a proceeding which is statutorily limited to an adjudication of one set of facts and from which all other issues are excluded. They do not have this right. This Court has repeatedly held that the Fourteenth Amendment does not give litigants the right to demand one form of proceeding in which to present claims or defenses over another. *Inland Empire Council* v. *Millis,* 325 U.S. 697, 710 (1945); *NLRB* v. *Mackay Co.,* 304 U.S. 333, 351 (1938); *Iowa Central Ry.* v. *Iowa,* 160 U.S. 389, 393 (1898).

[2] Thus the case of *Turner* v. *Blackburn*, 389 F. Supp. 1250 (W.D. N.C. 1975), upon which the Beatons rely, is inapposite. The district court in *Turner* was faced with a direct challenge to North Carolina's statutory procedure for foreclosure itself. The challenged statute here, on the other hand, bears no relationship to the procedure necessary to effectuate the actual foreclosure. This appeal does not question the validity of these proceedings, which, furthermore, differ greatly from those employed in North Carolina.

Although this Court has overturned some state statutory schemes in which defenses to possessory actions were limited, this appeal does not challenge such a scheme. The proceedings below bear no resemblance to either the summary garnishment proceedings invalidated in *Sniadach* v. *Family Finance Corp.,* 395 U.S. 337 (1969), or the summary seizure of goods similarly condemned in *Fuentes* v. *Shevin,* 407 U.S. 67 (1972). Unlike those cases, Massachusetts proceedings pursuant to the Relief Act, even when the foreclosing mortgagee's petition is allowed, do not result in the deprivation of property. Indeed the only effect of the allowance of the mortgagee's petition is the prevention of a potential future cloud on the mortgagee's title. In order to foreclose, the mortgagee still must comply with all the relevant provisions of Massachusetts law which allow sufficient time for actions by the mortgagor to prevent foreclosure.

Furthermore, this Court has consistently permitted states to require certain defenses to actions for possession of real estate to be litigated separately. *Lindsey* v. *Normet,* 405 U.S. 56 (1972); *Bianchi* v. *Morales,* 262 U.S. 170 (1923); *Grant Timber Co.* v. *Gray,* 236 U.S. 133 (1915). In *Grant Timber,* the Court upheld a Louisiana statute which barred defendants in any possessory action from bringing suit to establish title until after judgment had been rendered in the possessory suit. Eight years later, in *Bianchi,* this Court similarly upheld the validity of a Puerto Rico statute which limited the defenses available to foreclosure itself to the defense of payment. Just three years ago, in *Lindsey,* this Court, in upholding an Oregon statute effectively limiting defenses to Forcible Entry and Wrongful Detainer suits to payment of rent, relied upon *Grant Timber* and *Bianchi* as precedent for its decision. These cases all stand for the proposition that states "may exclude all claims of ultimate right from possessory actions, consis-

tently with due process of law." *Bianchi* v. *Morales, supra* at 171.

Massachusetts has limited the issues which can be raised in a hearing to determine the existence of certain persons to the existence or non-existence of such persons. If a state can constitutionally limit defenses to a foreclosure action itself, it can certainly limit issues which can be raised in an action which is at most a prelude to foreclosure. *See Bianchi* v. *Morales, supra.* Indeed, an action pursuant to the Relief Act is not even necessary in order to foreclose. *Beaton* v. *Land Court, supra* at 1012-13, 326 N.E. 2d. at 305-306. Accordingly, the decisions of this Court on this issue conclusively support the holding of the Supreme Judicial Court of Massachusetts and make it evident that the Beatons' Jurisdictional Statement does not raise a substantial federal question.

Conclusion

For the reasons stated above, the Appellees, Judges of the Land Court, respectfully urge that the Court dismiss this appeal for want of a substantial federal question, or in the alternative, that it affirm the judgment of the Supreme Judicial Court of the Commonwealth of Massachusetts.*

Respectfully submitted,

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